In the District Court of the United States, Western District of Virginia, Lynchburg Division

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CIVIL ACTION NO. 203

LYNCHBURG TRAFFIC BUREAU, PLAINTIFF-APPELLANT

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND CARRIERS BY RAILROAD IN OFFICIAL AND SOUTHERN CLASSIFICATION TERRITORIES, DEFENDANTS-APPELLEES

MOTION TO AFFIRM

(Filed September —, 1949)

Appellees, pursuant to Rule 12, paragraph 3, of the Revised Rules of the Supreme Court of the United States, move that the decree of the District Court be affirmed.

This is a direct appeal from the final decree entered on June 30, 1949, by a specially constituted District Court of three judges pursuant to 28 U. S. C., Sections 2284 and 2325, dismissing appellant's complaint seeking to set aside an order of the Interstate Commerce Commission. Appeal was allowed on August 27, 1949, and appeal papers served on August 31, 1949.

through which the traffic passes to destination.

In the past, the Commission has developed a system of rates for these boundary points so that these inequalities will be eliminated. In order not to disturb the complicated basic rate structures previously prescribed for the territories as a whole boundary-point adjustments have been accomplished by grouping the cities lying along the borders so that all cities in a group, both southern and northern, will enjoy the same class rates. The class rate so prescribed is the rate ordinarily applicable to one of the locations in the group. Such a control location is referred to as a hold point.[3]

[3] In *Southern Class Rate Investigation*, 128 I. C. C. 567, 601, the Commission prescribed, *inter alia*, that on traffic moving between Official Territory points and the gateway points in Virginia, the Official Territory rates would be the minima, although the Virginia gateways might be located in Southern Territory. Since then, and in order to integrate the rate structures between these two territories, the Commission has often prescribed that the minima at the border points shall be the rates for one of the territories applicable to one of the gateway points in the group. *Minimum Rates on Hay and Straw*, 152 I. C. C. 355; *Watermelons From, To, and Between Southern Points*, 191 I. C. C. 435; *Cotton, Woolen, and Knitting Factory Products*, 211 I. C. C. 692, 220 I. C. C. 189; *North Carolina Corp. Comm.* v. *Akron, C. & Y. Ry. Co.*, 213 I. C. C. 259; *Commonwealth of Kentucky* v. *Ahnapee & W. Ry. Co.*, 213 I. C. C. 297, 268 I. C. C. 750; *East Tennessee Border Traffic Assn.* v. *Akron, C. & Y. Ry. Co.*, 214 I. C. C., 316, 268 I. C. C. 750; *Roxboro Broom Works* v. *Baltimore & O. R. Co.*, 215 I. C. C. 131; *B. Farris & Son* v. *Baltimore & O. R. Co.*, 226 I. C. C. 372.

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Following these adjustments, and in 1940, the Southern carriers, by exceptions filed to the Southern Classification, adopted lower classifications on less-than-carload and any quantity items in order to meet motor truck competition. This left the rate structure as such undisturbed, but by reclassification made lower effective class rates applicable to these types of shipments. The effect of this action was to remove the use of previously established hold points and minimum group rates to the boundary points on these types of traffic, although the minimum group rates previously prescribed on carload traffic remained in effect.[4] Thus, less-than-carload and any-quantity shipments moving interterritorially to the border points in Southern Territory took lower rates than the same types of shipments moving intraterritorially to and from border points in Official Territory. The temporary authority to continue this adjustment was revoked in 1946.

Passing over the intermediate steps which led to the adjustment prescribed in the orders here involved, we find that the Commission has now reestablished minimum group rates for the boundary points on all types of interterritorial traffic

[4] The Commission had granted temporary authority under Section 4 of the Act (49 U. S. C. § 4) so that the rail carriers could establish these rates in order to meet the rate competition from motor carriers. *Maximum Rates on Rail Traffic between North and South*, 273 I. C. C. 33, 35. The order was Fourth Section Order No. 14001, effective December 3, 1940.

subject to class rates, although the rates and the hold points are not in all instances the same as formerly. The changes were designed to make more equitable the complicated adjustment necessary, and the result is that all along the borders between the two territories cities which are gateways have been placed in defined groups, and interterritorial rates have been blanketed to them. Equality of rate treatment, and the elimination of violations of the Interstate Commerce Act, have in this way been secured. But, as the Commission pointed out (273 I. C. C. 33, 42), this adjustment, while more equitable, is temporary pending the complete and final adjustments in classifications and class rates ordered in the *Class Rate Investigation, 1939, supra.*

The plaintiff-appellant did not attack the orders in their entirety, but seeks to have declared invalid the fractional part which places Lynchburg and Danville, Virginia, in the same group. Lynchburg is located in Official Classification Territory, while Danville is in Southern Classification Territory, approximately 65 miles south of Lynchburg. Both are gateway or border points between the two territories. Were it not for the present rate orders, Danville would be entitled to lower rates on certain commodities from Official Territory than would Lynchburg, even though the latter is in Official Territory. For example, the first-class rate on shoes from New York to Lynchburg is 111 cents per

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one hundred pounds, while the first-class rate from New York to Danville is 120 cents per one hundred pounds. The result of the exceptions to the Southern Classification already described, was that the first-class 120-cent rate to Danville was reduced to a third-class 84-cent rate on shoes. The Official Territory lines did not take similar action, so that the Lynchburg rate remained at 111 cents. An obvious inequity to Lynchburg resulted. The Commission remedied this by prescribing as minima equal class rates to each locality, and placed them in a rate group for this purpose. Extensive changes in a temporary and delicate rate adjustment for the numerous similarly situated locations along the borders between these large territories was thus rendered unnecessary. As the whole rate adjustment is concerned, these minimum-rate orders are but an incident in a large-scale project, which the Lynchburg-Danville group adjustment is but a fraction of the incident.

The appellant's assignment of errors goes only to the scope of the Commission's power to prescribe identical minimum rates for a group of cities or gateways. There appears to be no issue as to the adequacy of the findings or the sufficiency of the evidence to support them, or of any irregularity in the procedure before the Commission or the District Court. The question is, then, under what conditions may the Commission prescribe minimum group rates.

The Commission's authority to prescribe identical rates for a group or an area has been frequently exercised and has been upheld. In *Commodity Rates on Lumber and Other Forest Products,* 165 I. C. C. 561, 565, 566, the Commission said:

> It is hardly necessary to say that the practice of grouping points of origin and destination and applying the same rate to all points within the group is an outstanding characteristic of the rate structure of the country. This practice has existed from the very beginning and in principle meets with general approval. Such grouping may be actuated in large part by commercial and competitive reasons, as in the case of the great citrus fruit and lumber blankets, or it may be resorted to merely for convenience and simplicity of rate publication. In a multitude of cases we have recognized its necessity and desirability.

This Court has affirmed the Commission's authority in this respect. In *Illinois Commerce Commission* v. *United States*, 292 U. S. 474, it was said at page 486:

> Treating an area as a unit and applying a uniform blanket or group rate within it, as is the common practice with respect to switching rates, is within the competence of the Commission. See *St. Louis Southwestern Ry. Co.* v. *United States,* 245 U. S. 136, 138, Note 1, 141; *United States* v.

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Illinois Central R. Co., 263 U. S. 515, 518, Note 1; *Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 660, 664.

This well settled power to prescribe or approve rates on a group basis is found in those provisions of the Interstate Commerce Act which outlaw railroad freight rates which are unreasonable, unjustly discriminatory, unduly prejudicial or unreasonably preferential, as well as in those provisions of the Act forbidding lower charges for the transportation of a like kind of property over the same route for a longer than for a shorter distance, and authorizing the Commission to determine the rate which will clear the prohibitions of the Act.[5]

The determination by the Commission that the rate prescribed or approved is reasonable, nondiscriminatory, non-prejudicial, or non-preferential is a question of fact which is within the competence of the Commission to decide. *Illinois Central Railroad Company* v. *Interstate Commerce Commission*, 206 U. S. 441, 454–455; *Pennsylvania Company* v. *United States*, 236 U. S. 351, 361; *Western Paper Makers' Chemical Company* v. *United States*, 271 U. S. 268, 271; *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534, 546; *New York* v. *United States*, 331 U. S. 284, 347. Such a determination is of course subject to judicial review in accordance with the

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customary standards. But here there is no assertion of irregularity, but only the question of the statutory power to prescribe minimum group rates in order to readjust a rate relationship from one of unequality to one of equality, a power which has been upheld, as has been shown. Thus the Commission has the authority to determine that a group rate is the appropriate solution to a problem of unreasonableness, unjust discrimination or undue prejudice.

Since it is clear that the Commission has the power to prescribe group rates to remove these prohibited results, it necessarily follows that it may do so in order to prevent violations of the long-and-short-haul provisions of the Act. Indeed, section 15 (1) of the Act specifically authorizes the Commission to prescribe rates for those which are "in violation of any of the provisions of this part." And the Commission has administrative discretion in the granting or withholding of relief under that prohibition. Further, if the Commission grants relief under the Fourth Section there results no violation of the prohibitions against discrimination or prejudice. *Intermountain Rate Cases,* 234 U. S. 476, 482–483, 485–486. Here the Commission found that the rates involved "are reasonable and otherwise lawful," a conclusion which obviously has a rational basis, and which is controlling under the estab-

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lished doctrine of administrative finality just discussed.[6]

The Commission's power to establish minimum rates is likewise clear. Section 15 (1) provides in part:

> That whenever, after full hearing, upon complaint * * *, or after full hearing

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[6] The legislative history of the Fourth Section is clear that the framers of the legislation did not intend to prohibit an equality of charges. The District Court refers to this in its opinion at pages 10–11:

"It is true that Section 4 (1) provides (following the long-haul, short-haul clause just quoted): '* * * but this shall not be construed as authorizing any common carrier * * * to charge or receive as great compensation for a shorter as for a longer distance * * *.' Senator Cullom, on January 10, 1887, in explaining this provision to the Senate, stated:

"'The declaration * * * does not in terms prohibit the charging as much for a shorter as for a longer distance, but simply withholds the legislative sanction from the making of such a charge. This qualifying clause negatives the inference that might possibly be drawn from the language of the section without these words, namely: that an equal charge for a shorter distance is authorized by inference because only a greater charge is prohibited. This qualification, therefore, leaves the question of whether an equal amount can be charged for the shorter distance to be determined by the provisions of the bill to which I have already referred, requiring all charges to be reasonable, and forbidding the giving of an unreasonable preference or advantage to any particular locality.' 18 Cong. Rec. 485.

"It is thus clear that the charging of the same rate to both Lynchburg and Danville is not violative of Section 4 of the Act, and that section leaves it to the Commission to determine whether such a rate is unreasonable or otherwise violative of other portions of the Act."

> under an order for investigation and hearing made by the Commission on its own initiative, * * *, the Commission shall be of opinion that any individual or joint rate, fare or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property * * *, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, * * *, or the maximum or minimum, * * *.

The language of the statute could not be more certain. And the power to prescribe a minimum rate has been several times upheld by the courts. *New York* v. *United States*, 331 U. S. 284, 345–347; *Youngstown Sheet & Tube Co.* v. *United States*, 295 U. S. 476; *Scandrett* v. *United States*, 32 F. Supp. 995 (D. Oregon), affirmed 312 U. S. 661;[7] *Jefferson Island Salt Co.* v. *United States*, 6 F. (2d) 315, (N. D. Ohio).

The District Court found no violation of the law in the orders of the Commission which ad-

[7] At page 998, the three-judge District Court said (32 F. Supp. 995, 998):

"* * * the Commission is empowered to suspend such rates and fix minimum rates, if the proposed rates are unjust, unreasonable, unjustly discriminatory, unduly preferential, prejudicial, or violate some other applicable statute."

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justed these rates by increasing one to the level of the other. If this lawfully exercised power has resulted in removing some supposed advantage, the orders may not be held invalid, unless the result is one of unreasonableness, unjust discrimination, undue preference, or otherwise in the teeth of the regulatory statute. We have shown that the Commission had the power to take the action it did. While it is true that the Commission may not prescribe an unlawful rate structure, "this does not mean that the law compels identity of treatment for like services at different places. It prohibits only 'undue' or 'unreasonable' discriminations." *Board of Trade of Kansas City* v. *United States, supra,* at page 546. And continuing from this page of the opinion:

> Whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of those questions of fact that have been confided by Congress to the judgment and discretion of the Commission * * *, and upon which its decisions, made the basis of administrative orders operating *in futuro,* are not to be disturbed by the courts except upon a showing that they are unsupported by the evidence, were made without a hearing, exceed constitutional limits, or for some other reason amount to an abuse of power. *Manufacturers Ry. Co.* v. *United States,* 246 U. S. 457, 481; see *Nashville, C. & St.*

L. Ry. v. *Tennessee,* 262 U. S. 318, 322; *United States* v. *Chicago Heights Trucking Co.,* 310 U. S. 344, 352–53.

> The process of rate making is essentially empiric. The stuff of the process is fluid and changing—the resultant of factors that must be valued as well as weighed. Congress has therefore delegated the enforcement of transportation policy to a permanent expert body and has charged it with the duty of being responsive to the dynamic character of transportation problems.

It is plain that the Commission was required to act to remove the violations of law created by the classification adjustments which had taken place. It did so within its powers. That the decision reached through the exercise of informed judgment based upon the record made did not accord w.th appellant's desires, is not a ground for reversal. For, as the Court said in the *Board of Trade* case, just cited (p. 547), "Any solution had to rest on informed judgment.", and any action would adversely affect someone. Moreover, adjustments of this nature are not susceptible to "mathematical niceties", as the District Court observed. Danville's rate has been increased; it has not complained. Lynchburg's rate has been left undisturbed; it complains. But we submit that the situation presents no substantial question for this Court, for the power in the Commission to prescribe minimum group rates

to remove violations of the Act is plain. Since there is no other issue, it is respectfully submitted that the judgment of the District Court should be affirmed.

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